

STATE OF MICHIGAN
COURT OF APPEALS

VIRGINIA IRENE DELONG,

Plaintiff-Appellee,

v

JASON ERIC DELONG,

Defendant-Appellant.

UNPUBLISHED
April 21, 2015

No. 325381
Clinton Circuit Court
Family Division
LC No. 13-024275-DM

Before: O'CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying his motion for a change in custody. We affirm.

The parties currently have joint legal custody over their daughter, the minor child, who is 16 years old. Plaintiff has sole physical custody, and defendant has parenting time every other weekend. Defendant filed a motion to change custody, and sought joint physical custody of the minor child. The trial court denied defendant's motion, and defendant appeals.

Defendant argues that the trial court erred in finding that he had not shown proper cause or a change in circumstances justifying a hearing on defendant's motion to change custody. We review a trial court's determination of whether a party has demonstrated proper cause or a change of circumstances under the great weight of the evidence standard. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). "Under the great weight of the evidence standard, this Court defers to the trial court's findings of fact unless the trial court's findings clearly preponderate in the opposite direction." *Id.* (internal quotation marks and citation omitted).

"[A] trial court may modify a custody award only if the moving party first establishes proper cause or a change in circumstances." *Id.* at 603, citing MCL 722.27(1)(c) and *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). The party seeking a change in custody must establish the existence of either proper cause or a change of circumstances by a preponderance of the evidence. *Vodvarka*, 259 Mich App at 508; see also *In re Anjoski*, 283 Mich App 41, 53; 770 NW2d 1 (2009). If proper cause or a change in circumstances is not shown, "the court is precluded from holding a child custody hearing." *Vodvarka*, 259 Mich App at 508; see also *In re Anjoski*, 283 Mich App at 53. The purpose of this threshold requirement

“is to minimize unwarranted and disruptive changes of custody orders, except under the most compelling circumstances.” *Corporan*, 282 Mich App at 603.

To establish proper cause, the movant must prove, by a preponderance of the evidence, “the existence of an appropriate ground for legal action to be taken by the trial court.” *Vodvarka*, 259 Mich App at 512. Further, “[t]he appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude [as] to have a significant effect on the child’s well-being.” *Id.* Similarly, to establish a change of circumstances, the movant must prove that “since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child’s well-being, have materially changed.” *Id.* at 513. A sufficient demonstration of a change in circumstances requires the movant to “demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child.” *Id.* at 513–514.

Defendant asserts that he submitted evidence in support of his motion showing proper cause or a change in circumstances. Specifically, defendant asserts that the minor child is old enough to decide where she lives; that there is a program at the high school near defendant which would allow the minor child to attend high school for an additional year and receive a associate’s degree at no cost; plaintiff disparages defendant to the minor child; plaintiff has violated the parenting time order; and plaintiff and the minor child have had arguments necessitating police involvement.

Here, we do not agree that the facts presented by defendant are of such magnitude to have a significant effect on the minor child’s well-being, or amount to more than normal life changes. See *id.* at 512-513. Indeed, defendant did not allege any effects to the minor child’s well-being as a result of any of the allegations. For instance, although there were allegations that plaintiff and the minor child had verbal altercations, there are no claims that the minor child’s well-being was at risk living with plaintiff. This is supported by the police report submitted by defendant. The report provides that plaintiff and the minor child had a verbal altercation, and that there was no evidence of harm to the minor child if she stayed with plaintiff. Moreover, defendant offered no facts to suggest that the verbal exchanges between plaintiff and the minor child were more than a normal life change that is typical in a parent and teenage relationship. Further, although defendant asserted that the minor child would like to attend the school near defendant because it offers a college program, defendant did not allege that the minor child is not doing well in her current school, or that the minor child’s well-being is at risk if she does not attend the college program.

The thrust of defendant’s claim relates to the minor child’s preference. Defendant asserts that the minor child is old enough to determine where she should live. A child’s preference is one of the best-interest factors, MCL 722.23(i), and a child’s preference can constitute proper cause to revisit a custody decision; however, a movant must also show that the ground is “of such magnitude to have a significant effect on the child’s well-being.” *Vodvarka*, 259 Mich App at 512. Here, again, defendant did not point to any specific, significant effects that living with plaintiff has had on the minor child’s well-being. Additionally, while the minor child may now prefer to live with defendant, it is normal that a child’s preferences may change. Defendant’s additional allegations relate to disputes over minor allegations of contempt, visitation, or

flexibility in parenting time, which are insufficient to constitute proper cause or a change of circumstances. See *Dailey v Kloenhamer*, 291 Mich App 660, 665-666; 811 NW2d 501 (2011).

Affirmed.

/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood
/s/ Michael F. Gadola